SUPREME COURT, U. S.

No. 75-653

Supreme Court, U. S.
FILED
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1975

GERALD R. WEEKS, individually and as Chairman of the DuPage County Board of Commissioners, ROBERT A. MORRIS, individually and as Chairman of the Special Investigative Committee, and FRANK H. BELLINGER, individually and as Vice-Chairman of the Special Investigative Committee,

Petitioners,

vs.

JAMES CLARK, Treasurer of DuPage County, and MICHAEL DUTTON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable Warren E. Burger, Chief Justice, and the Associate Justices of the Supreme Court:

Petitioners, Weeks, Morris and Bellinger, respectfully petition for a writ of certiorari to review an order of the United States Court of Appeals for the Seventh Circuit dismissing Petitioners' appeal below.

OPINIONS BELOW

The United States District Court for the Northern District of Illinois rendered no opinion below. The District Court's Minute Order which was appealed from is reprinted as Appendix A to this Petition. The opinion of the Seventh Circuit Court of Appeals dismissing Petitioners' appeal is not officially reported but its Slip Opinion is reprinted as Appendix B to this Petition.

JURISDICTION

The decision of the Court of Appeals which constitutes its judgment was entered on August 5, 1975. Jurisdiction of this Court to review the judgment by writ of *certiorari* is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED FOR REVIEW

(1) Whether a Temporary Restraining Order in a case required to be heard by a three-judge court pursuant to 28 U.S.C. §2281 may be extended over opposition beyond twenty days without a hearing on a motion for a preliminary injunction and whether such a procedure is sanctioned by Rule 65(e) of the Federal Rules of Civil Procedure.

(2) Whether an indefinitely extended Temporary Restraining Order becomes an appealable interlocutory injunction within the terms of 28 U.S.C. §1292(a)(1) even though a three-judge court has been convened pursuant to 28 U.S.C. §2284(1).

(3) Whether 28 U.S.C. §§2281 or 2284 confers general appellate jurisdiction on three-judge district courts.

(4) Whether the Court of Appeals erred in dismissing the Petitioners' appeal.

STATUTES INVOLVED

Title 28 U.S.C. §2284(3) provides in relevant part:

> "In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court."

Rule 65(b) of the Federal Rules of Civil Procedure, as amended, Effective July 1, 1966, provides in relevant part:

> "A temporary restraining order . . . shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period."

Rule 65(e) of the Federal Rules of Civil Procedure provides in relevant part:

> "These rules do not modify any statute of the United States relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; . . . or Title 28, U.S.C. §2284, relating to actions required by Act of Congress to be heard and determined by a district court of three judges."

Title 28 U.S.C. §1450 provides in relevant part:

> "Whenever any action is removed from a State court to a district court of the United States . . .
>
> * * *

All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court."

STATEMENT OF THE CASE

Respondents (plaintiffs below) filed a lawsuit on June 19, 1975, in the United States District Court for the Northern District of Illinois, pursuant to Title 42 U.S.C. §1983, to redress alleged deprivations of their rights under the First, Fourth and Fourteenth Amendments of the Constitution of the United States.

Respondents sought and obtained a Temporary Restraining Order of June 23, 1975, preventing your Petitioners from proceeding with an investigation of James H. Clark relating to the propriety of his conduct as Treasurer of DuPage County by a special committee comprised of 13 members of the County Board of DuPage County, Illinois. Petitioners are elected members of the DuPage County Board.

On July 1, 1975, over opposition of Petitioners, who filed a motion to dissolve the Temporary Restraining Order, the single district court judge extended the Temporary Restraining Order indefinitely. (Appendix A) To date, Petitioners have had no hearing on the Respondents' motion for a preliminary injunction. On July 14, 1975, Petitioners filed a Notice of Appeal in the Seventh Circuit Court of Appeals. On August 5, 1975, acting on the motion of Respondents, the Seventh Circuit Court of Appeals dismissed the appeal for lack of jurisdiction. The court below held it was without jurisdiction to hear Petitioners' appeal in view of the provisions of 28 U.S.C.

§2284(3) and §2284(5), citing *Hicks* v. *Pleasure House, Inc.*, 404 U.S. 1 (1971):

> ". . . a temporary restraining order issued pursuant to §2284(3) is reviewable in a court of appeals to the extent that any such order is reviewable under 28 U.S.C. §§1291 and 1292(a). However, if no such appeal is taken before the three-judge court is convened, application must be made to that court for vacation or modification of the temporary restraining order pending a final determination of the merits." 404 U.S. at 3

REASONS FOR GRANTING THE WRIT

The Petition raises a fundamental question concerning the limited and fixed duration of Temporary Restraining Orders. Rule 65(b) of the Federal Rules of Civil Procedure is explicit. Petitioners have had no evidentiary hearing on a motion for preliminary injunction and have been indefinitely enjoined. In normal circumstances, the law is clear that the Temporary Restraining Order presently entered is of no effect. *Granny Goose Foods, Inc.* v. *Teamsters,* 415 U.S. 423, 451 (1974); *Pan American World Airways* v. *Flight Engineers Ass'n.,* 306 F.2d 840 (2d Cir. 1962); *Sims* v. *Greene,* 160 F.2d 512 (3rd Cir. 1947).

Thus, the court must determine whether a Temporary Restraining Order granted in a three-judge court case has a special indefinite life which Temporary Restraining Orders in other cases do not.

In *Granny Goose Foods, Inc.* v. *Teamsters, supra,* this court granted *certiorari* to the Ninth Circuit Court of Appeals in a case involving an interpretation of 28 U.S.C. §1450. The case in the Ninth Circuit turned on the narrow issue of whether a Temporary Restraining Order could be extended indefinitely without a hearing held on a motion for a preliminary injunction. The Ninth Circuit held that it could not and this Court, noting a conflict in the circuits,[1] granted *certiorari* and affirmed the Ninth Circuit.

---

[1] *Appalachian Volunteers, Inc.* v. *Clark,* 432 F.2d 530 (6th Cir. 1970), *cert. denied* 401 U.S. 939 (1971); *Morning Telegraph* v. *Powers,* 450 F.2d 97 (2d Cir. 1971), *cert. denied* 405 U.S. 954 (1972).

The *Granny Goose* case involved employer-employee relationships and, read literally, Rule 65(e) of the Federal Rules of Civil Procedure might well proscribe any application of Rule 65(b) with respect to the duration of a Temporary Restraining Order in such a case. This Court, while not considering the applicability of the provisions of Rule 65(e), rejected the notion that a special breed of Temporary Restraining Orders was created by the provisions of 28 U.S.C. §1450 and accordingly should grant *certiorari* here to determine the important question of whether a special breed of Temporary Restraining Order of indefinite duration is created by virtue of 28 U.S.C. §2284(3).

In *Granny Goose*, this Court was faced with the precise circumstances which are present in the instant case. In resolving the facial conflict between the provisions of 28 U.S.C. §1450 and Rule 65(b), the Court succinctly stated the issue and held:

> "To the extent this reading of §1450 is inconsistent with the time limitations of Rule 65(b), petitioners contend the statute must control.
>
> In our view, however, §1450 can and should be interpreted in a manner which fully serves its underlying purposes, yet at the same time places it in harmony with the important congressional policies reflected in the time limitations in Rule 65(b)." 415 U.S. at 435.

The Court should grant this petition for *certiorari* to place Title 28 U.S.C. §2284(3) in harmony "with the

---

[2] Basically involved, as this court noted, was a dispute over the enforceability against the defendant union of certain changes in new contracts. 415 U.S. at 427. The Temporary Restraining Order was obtained *ex parte* and the union's motion to dissolve the Temporary Restraining Order was denied.

important congressional policies reflected in the time limitations in Rule 65(b)."

The Seventh Circuit Court of Appeals held that it was without jurisdiction to hear Petitioners' appeal since if the Temporary Restraining Order were appealable at all it must be heard by the three-judge court. A three-judge court is a *nisi prius* tribunal and does not have general appellate jurisdiction. *Preston County Light & Power Co.* v. *Public Service Comm'n of West Virginia*, 297 F.Supp. 759, 864 (S.D.W.Va. 1969; *Jacobs* v. *Tawes*, 250 F.2d 611, 614 (4th Cir. 1957); see also *Majuri* v. *United States*, 431 F.2d 469 (3rd Cir. 1970), *cert. denied* 400 U.S. 943 (1970); *West Virginia Motor Truck Ass'n* v. *Public Service Comm'n*, 123 F.Supp. 206, 216 (S.D.W.Va. 1954), *aff'd* 348 U.S. 881 (1954). Normally, of course, Temporary Restraining Orders are not appealable. *Pan American*, *supra*, at 841-842. It is only when a Temporary Restraining Order becomes an interlocutory injunction that it is subject to review pursuant to 28 U.S.C. §1292(a)(1). *Pan American* at 842; *Sims* v. *Greene*, *supra*, at 517. Petitioners filed a timely notice of appeal on July 14, 1975, exactly one day after a "normal" Temporary Restraining Order would have expired. If in three-judge cases the Federal Rules of Appellate Procedure for filing a notice of appeal are amended so that a party against whom a Temporary Restraining Order is obtained must file his notice of appeal before the chief judge of the circuit court convenes the three-judge court, this Court should seize an opportunity to make this anomaly clear to the practicing bar. It is Petitioners' view that the Temporary Restraining Order entered June 23, 1975 did not become an interlocutory injunction and thus appealable within 28 U.S.C. §1292(a)(1) until the expiration of twenty days from the date it was originally granted, June 23, 1975.

CONCLUSION

All questions now presented for review were answered incorrectly by the lower courts in that the holdings below conflict with applicable decisions of this court and the mandate of the Federal Rules of Civil Procedure relating to the duration of Temporary Restraining Orders.

It is requested, therefore, that this petition for a Writ of Certiorari be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

County of Cook }
State of Illinois } ss.

I, Terry M. Grimm, state under oath that I have this date served the attached Petition for Writ of Certiorari on James Clark and on Michael Dutton by delivering three copies of the same by hand to their counsel of record, Thomas P. Sullivan, Alan L. Metz and Jeffrey D. Colman, Jenner & Block, One IBM Plaza, Chicago, Illinois, and by mailing one copy of the same by certified mail to their additional counsel of record, Paul T. Kalinich, 646 Roosevelt, Glen Ellyn, Illinois. All parties required to be served have thus been served.

.....
Terry M. Grimm

Subscribed and sworn to
before me this third day
of November, 1975.

.....
Notary Public

APPENDIX A

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division

Name of Presiding Judge, Honorable William J. Lynch

Cause No. 75 C 2009 Date 7-1-75

Title of Cause

James Clark

v.

Gerald R. Weeks

Brief Statement of Motion

Ptff's Motion for extension of T.R.O. & Motion for Preliminary Injunction.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and
Addresses of
moving counsel

Representing

Names and
Addresses of
other counsel
entitled to
notice and names
of parties they
represent.

Notes: Ordered that the temporary restraining order entered by this Court in the above-entitled action on June 23, 1975, be extended in full force until such time as the Three-Judge Court hears and decides the pltff's. Motion for a preliminary injunction. (Draft)

/s/ W. J. L.
(Docketed Jul 3 1975)

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

APPENDIX B

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

August 5, 1975

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*

Hon. JOHN PAUL STEVENS, *Circuit Judge*

Hon. WILLIAM J. BAUER, *Circuit Judge*

No. 75-1667

JAMES CLARK, Treasurer of DuPage County, and MICHAEL DUTTON,

Plaintiffs-Appellees,

vs.

GERALD R. WEEKS, etc., et al.,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 75 C 2009

WILLIAM J. LYNCH, *Judge*.

This matter comes before the Court on the "Motion of Defendants-Appellants for Suspension of Rule 2 of the Federal Rules of Appellate Procedure" and plaintiffs-appellees' "Motion to Dismiss Appeal for Lack of Jurisdiction and in the Alternative Answer in Opposition to Suspension of F.R.A.P. 2."

Defendants seek to appeal from an order entered by a Single Judge District Court on July 1, 1975, extending a temporary restraining order until such time as a

Three-Judge Court hears and decides plaintiffs' motion for a preliminary injunction. Defendants filed their notice of appeal from the district court's order on July 14, 1975. We note that plaintiffs' application for the convening of a Three-Judge Court was granted by the Single Judge District Court on June 26, 1975 and that on July 2, 1975 a Three-Judge Court was convened.

Plaintiffs argue that this Court is without jurisdiction to hear this appeal in light of 28 U.S.C. §§2284 (3) and (5) and that defendants must seek relief from the Three-Judge Court concerning dissolution or modification of the temporary restraining order. In *Hicks* v. *Pleasure House, Inc.* 404 U.S. 1 (1971) (Per Curiam), the United States Supreme Court addressed the issue of the proper court for review of a temporary restraining order entered by a Single Judge District Court when a Three-Judge Court has convened. Though a court of appeals may review a temporary restraining order entered pursuant to 28 U.S.C. §2284 (3), in the same manner and to the same extent that any such order is reviewable under 28 U.S.C. §§ 1291 and 1292(a), appellate review is improper if the notice of appeal is filed subsequent to the convening of a Three-Judge Court. The Supreme Court stated:

> "Thus, if a single judge oversteps his limited authority under §2284(3), a court of appeals may correct his error. In addition, a temporary restraining order issued pursuant to §2284(3) is reviewable in a court of appeals to the extent that any such order is reviewable under 28 U.S.C. §§ 1291 and 1292(a). However, if no such appeal is taken before the three-judge court is convened, application must be made to that court for vacation or modification of the temporary restraining order pending a final determination of the merits." *Hicks, supra* at 3.

In light of the foregoing,

IT IS HEREBY ORDERED that plaintiffs' motion to dismiss be, and the same is hereby, GRANTED.

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Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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TREATISES CITED

7 *Moore's Federal Practice*, ¶65.07, p. 65-81-2, n. 11 8

11 Wright & Miller, *Federal Practice and Procedure: Civil*, § 2953, p. 520 8

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

To The Honorable Warren E. Burger, Chief Justice, and the Associate Justices of the Supreme Court:

Respondents pray that the Petition for a Writ of Certiorari be denied.

OPINIONS BELOW

The United States District Court's unpublished minute order extending a previously granted restraining order until the duly convened three-judge court hears and decides the Respondents' motion for a preliminary injunction appears in Appendix A of the Petition for a Writ of Certiorari (hereinafter "Petition").

The unpublished opinion of the United States Court of Appeals for the Seventh Circuit dismissing Petitioners' appeal for want of jurisdiction is set forth in Appendix B of the Petition.

JURISDICTION

The jurisdictional statement is adequately set forth in the Petition.

QUESTION PRESENTED FOR REVIEW

Whether a Court of Appeals has jurisdiction to review the validity of a temporary restraining order entered by a single District Court Judge when the notice of appeal is filed after a Three-Judge District Court has been convened.

STATUTES INVOLVED

Title 28 U.S.C. § 2284(3) and Federal Rules of Civil Procedure 65(b) and 65(e) are set forth in the Petition.

Petitioners neglected to include Title 28 U.S.C. § 2284(5) which states in relevant part:

> (5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall

not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

STATEMENT OF THE CASE

Respondents filed their complaint on June 19, 1975 in the United States District Court for the Northern District of Illinois. On the same date, Respondents requested that a statutory three-judge court be convened (Appendix A, *infra*) and that the Petitioners be temporarily restrained from enforcing the challenged provisions of an Illinois state statute. Pursuant to notice, a hearing was held on June 23, 1975 at which time Respondents' motion for a temporary restraining order was granted. Respondents' motion for a preliminary injunction was filed on June 30, 1975.

Contrary to Petitioners' "Statement of the Case," the single District Court Judge did not extend the temporary restraining order "indefinitely." (Petition, p. 4). Rather, the District Court extended the temporary restraining order ". . . until such time as the three-judge court hears and decides the plaintiff's Motion for a preliminary injunction." (Petition, Appendix A, p. 2a). This order was entered on July 1 and docketed on July 3, 1975. (Id.) On July 2, 1975, the Chief Judge of the United States Court of Appeals for the Seventh Circuit designated the members of the three-judge court. The Chief Judge's designation order is included herein as Appendix B, *infra*.

On July 14, 1975, 12 days after the three-judge court was convened, Petitioners filed their notice of appeal to the Seventh Circuit challenging the order extending the temporary restraining order until the three-judge court hears and decides the motion for a preliminary injunction. (Petition, p. 4). On August 5, 1975, the Court of Appeals, pursuant to Respondents' motion, dismissed the appeal for want of jurisdiction. (Petition, Appendix B). The Court of Appeals did not reach the merits of Petitioners' claim.

Since August, 1975, Petitioners have filed motions with the three-judge court to dismiss the complaint and to dissolve the temporary restraining order. Respondents have filed a motion for partial summary judgment. Extensive briefs have been filed by all parties, and the motions are now awaiting a decision by the three-judge court.

REASONS FOR DENYING THE WRIT

I.

The Court of Appeals Acted Properly In Dismissing Petitioners' Appeal For Lack Of Jurisdiction.

Contrary to Petitioners' representations, the Court of Appeals did not erroneously decide "all" of the questions set forth in the Petition. (Petition, p. 9). To the contrary, the Seventh Circuit did not reach the merits of Petitioners' appeal. The Court said nothing about the duration of a temporary restraining order in a case properly pending before a three-judge panel of the United States District Court. Instead, the Court of Appeals dismissed Petitioners' appeal for want of jurisdiction based on the authority of this Court's ruling in *Hicks* v. *Pleasure House, Inc.*, 404 U.S. 1 (1971).

The Court of Appeals acted properly in dismissing Petitioners' appeal. Respondents' motion for a temporary restraining order and for the convening of a three-judge court was made pursuant to 28 U.S.C. § 2284. Under subparagraph (3) of Section 2284, a single District Court Judge may "... grant a temporary restraining order to prevent irreparable harm." Subparagraph (5) of Section 2284 provides that "[t]he action of a single judge shall be reviewable by the full [three-judge] court at any time before final hearing."

In the case at bar, Petitioners filed their notice of appeal to the Court of Appeals *after* the single District Court Judge had granted Respondents' application for the convening of a three-judge court and *after* the Chief Judge of the Seventh Circuit had designated the members of the three-judge court. Under the facts of this case, and under

the provisions of Section 2284, the Court of Appeals was correct in holding that review lay with the three-judge court and not with the Court of Appeals.

This Court's ruling in *Hicks, supra* states (404 U.S. at 3):

> ". . . a temporary restraining order issued pursuant to § 2284(3) is reviewable in a court of appeals to the extent that any such order is reviewable under 28 U.S.C. §§1291 and 1292(a). *However, if no such appeal is taken before the three-judge court is convened, application must be made to that court for vacation or modification of the temporary restraining order pending a final determination on the merits.*" (emphasis added.)

Consequently, *Hicks* resolved the only question that is now properly before this Court. If Petitioners believe the temporary restraining order was improperly extended, Section 2284(5) gives them the right to ask the three-judge court to modify or dissolve it.

The Seventh Circuit's opinion is not in conflict with any other Court of Appeals' decision. On facts almost identical to the case at bar, the Court of Appeals for the Fifth Circuit held that it did not have jurisdiction to review the propriety of a temporary restraining order entered by a single judge where the notice of appeal was filed after the three-judge court had been convened. *Associated Theatres, Inc.* v. *Wade*, 487 F.2d 1221 (5th Cir. 1973). In construing *Hicks, supra*, the Fifth Circuit stated (487 F.2d at 1222):

> "A three judge court is 'convened' when the Chief Judge of the Circuit designates the judges under 28 U.S.C.A. § 2284(1). [Footnote omitted.] At that time such a court is available to review any prior or sub-

sequent action by the single judge, pursuant to the authority of 28 U.S.C.A. § 2284(5):

> The action of a single judge shall be reviewable by the full court at any time before final hearing. . . ."

Since the three-judge court in the instant case was convened on July 2, 1975 and Petitioners' notice of appeal was not filed until July 14, 1975, the Court of Appeals properly dismissed the appeal for lack of jurisdiction.

II.

The Single District Court Judge Properly Continued The Temporary Restraining Order In Effect Until The Three-Judge Court Hears And Decides Respondents' Motion For A Preliminary Injunction.

The Court of Appeals dismissed Petitioners' appeal without reaching the merits of their claims and without briefs on the question of the proper duration of a temporary restraining order in a matter pending before a properly convened three-judge court. Even assuming *arguendo* that this Court grants certiorari and decides to overrule its decision in *Hicks* v. *Pleasure House, Inc., supra,* this case should be remanded to the Seventh Circuit Court of Appeals for full briefing and a ruling on the merits.

We note, however, that the District Court Judge acted in strict compliance with 28 U.S.C. 2284(3) when he continued the temporary restraining order in effect until the three-judge court hears and decides Respondents' motion for a preliminary injunction. The problems involved in convening a three-judge court make it extremely difficult for a three-judge panel to decide a preliminary injunction motion within the time restraints of Rule 65(b) of the Federal Rules of Civil Procedure. The draftsmen of the

Federal Rules anticipated this fact in Rule 65(e) which expressly states that Rule 65 does not ". . . modify . . . Title 28, U.S.C. § 2284, relating to actions required by Act of Congress to be heard and determined by a district court of three judges."

Section 2284(3) gives the single District Court Judge the power to enter a temporary restraining order and continue it in force until the three-judge court hears and determines the motion for a preliminary injunction. Viewed in conjunction with F.R.C.P. 65(e), Section 2284 constitutes a legislative exception to the 10 day time limit set forth in Rule 65(b). *See Tennessee Public Service Commission* v. *United States,* 275 F. Supp. 87, 89 (W.D. Tenn. 1967); *Traffic Telephone Workers Federation of New Jersey* v. *Driscoll,* 71 F. Supp. 681, 682 (D.N.J. 1947).

Federal district courts frequently grant temporary restraining orders that are in effect until the motion for a preliminary injunction is heard and decided. *Cf., Kennan* v. *Nichol,* 326 F. Supp. 613, 615 (W.D. Wis. 1971), *aff'd,* 404 U.S. 1055 (1972); *Misurelli* v. *City of Racine,* 333 F. Supp. 735, 736 (E.D. Wis. 1971). In *Misurelli,* the single District Court Judge entered a temporary restraining order and continued it in effect for over one year until the three-judge court granted summary judgment. *Misurelli* v. *City of Racine,* 346 F. Supp. 43 (E.D. Wis. 1972) (three-judge court), *rev'd sub nom. on other grounds, City of Kenosha* v. *Bruno,* 412 U.S. 507 (1973). In addition, the principle commentators on the federal rules have noted that temporary restraining orders may properly extend beyond 20 days when an extension is necessary in order to provide extra time for a hearing and decision on a motion for a preliminary injunction. 11 Wright & Miller, *Federal Practice and Procedure: Civil,* § 2953, p. 520; 7 *Moore's Federal Practice,* ¶65.07, p. 65-81-2, n. 11.

Respondents have acted expeditiously and in good faith. Motions have been filed by both sides and are now awaiting decision by the three-judge court. The order of the District Court Judge continuing the temporary restraining order until the three-judge court acts on Respondents' motion for a preliminary injunction is in accordance with 28 U.S.C. § 2284(3) and is not contradicted by any opinion of this or any other Court.

CONCLUSION

Respondents respectfully pray that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES CLARK, Treasurer of DuPage County, and MICHAEL DUTTON,

Plaintiffs,

vs.

GERALD R. WEEKS, individually and as Chairman of the DuPage County Board of Commissioners, ROBERT A. MORRIS, individually and as Chairman of the Special Investigative Committee, and FRANK H. BELLINGER, individually and as Vice-Chairman of the Special Investigative Committee,

Defendants.

APPLICATION FOR CONVENING OF A THREE-JUDGE COURT

The plaintiffs, James H. Clark and Michael Dutton having commenced the above-entitled action for temporary and permanent injunctions restraining and enjoining the enforcement of Illinois Revised Statutes, Chapter 36, § 15 upon the ground that it is repugnant to the United States Constitution, hereby make application for the hearing of their motion for a temporary and permanent injunction before a three-judge district court as required

by 28 U.S.C. §§ 2281 and 2284. Plaintiffs respectfully request this Court to notify the Chief Judge for the United States Court of Appeals for the Seventh Circuit to convene a Statutory Three-Judge Court.

/s/ *Alan L. Metz*
One of the Attorneys for
Plaintiffs

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222-9350

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

JAMES CLARK, Treasurer of DuPage County and MICHAEL DUTTON,

Plaintiffs,

vs.

GERALD R. WEEKS, individually and as Chairman of the DuPage County Board of Commissioners, ROBERT A. MORRIS, individually and as Chairman of the Special Investigative Committee, and FRANK H. BELLINGER, individually and as Vice-Chairman of the Special Investigative Committee,

Defendants.

Civil Action
No. 75 C 2009

The undersigned Chief Judge of the Seventh Circuit having been notified by the Honorable William J. Lynch, United States District Judge for the Northern District of Illinois, of the filing of the above-mentioned cause, does hereby pursuant to Title 28 U.S.C. §2284 designate the

HONORABLE THOMAS E. FAIRCHILD

a United States Circuit Judge for the Seventh Judicial Circuit and the

HONORABLE PRENTICE H. MARSHALL

a United States District Judge for the Northern District of Illinois, to serve with the

HONORABLE WILLIAM J. LYNCH

as members of a three-judge United States District Court to hear and determine the above-entitled action or proceeding.

Dated this second day of July, 1975

/s/ *Thomas E. Fairchild*
Chief Judge of the
Seventh Circuit